



October 8, 2019

The Honorable Larry Hogan  
Governor  
State of Maryland  
Annapolis, MD 21401-1991

The Honorable Adrienne A. Jones  
Speaker of the House  
H-101 State House  
Annapolis, MD 21401-1991

The Honorable Thomas V. “Mike” Miller, Jr.  
President of the Senate  
H-107 State House  
Annapolis, MD 21401-1991

**Re: Medical Cannabis Grower and Processor Licenses**

Dear Governor Hogan, President Miller, and Speaker Jones:

On September 26, the Natalie M. LaPrade Maryland Medical Cannabis Commission (the “Commission”) announced it would delay the award of pre-approvals for new grower and processor licenses. As I explained at our public meeting, this decision was made because the Commission required additional time to complete its preliminary investigation to verify material aspects of the highest ranking applications, and the Legislative Black Caucus of Maryland had requested that the Commission delay the award due to concerns about the process. Separately, a Montgomery County Circuit Court judge issued a 10-day temporary restraining order preventing the Commission from issuing any pre-approvals.

Each of these events has been widely reported in the media. So has the lack of racial, gender, and ethnic diversity among medical cannabis owners and investors in Maryland and across the country. Less widely understood are the remedial measures taken by the Commission to address discrimination and promote diversity in the medical cannabis program, or the blinded application process and the next steps to be taken by the Commission. The Commission is submitting this letter to directly address each of these issues and respond to questions the Commission has received from members of the General Assembly regarding the grower and processor application process.

***Background***

The number of medical cannabis grower and processor licenses is capped under statute. When pre-approvals for medical cannabis licenses were first awarded in 2016, only 3 out of 15 grower awards and 3 out of 15 processor awards went to minority- and women-owned businesses. Of these, only one processor pre-approval was awarded to an African American-owned business. Seeking to address discrimination and increase diversity among licensees, the General Assembly passed emergency legislation – House Bill 2 – increasing the number of grower and processor licenses

and requiring the Commission to evaluate whether minorities and women were disadvantaged in the medical cannabis industry.

As directed by the law, the Commission collaborated with experts across the State to determine whether minorities and women experience discrimination in the medical cannabis industry, and if so, to evaluate remedial measures that may be used to address the needs of minorities and women and implement the selected measures through emergency regulations. The results of this evaluation were clear: there was evidence of discrimination against minorities and women in the medical cannabis industry, and African Americans and American Indians/Native Americans are significantly more disadvantaged than other minority groups or women.

Subsequently, the Commission adopted emergency regulations that allocated 15 percent of the total points on the license applications to diversity-related provisions. These regulations represent the most comprehensive attempt anywhere in the country to remedy discrimination and improve diversity in the medical cannabis industry. Importantly, these regulations did not allocate or “set-aside” licenses for minority- and women-owned businesses. Attempts to award medical cannabis licenses based solely on race, gender and ethnicity have been struck down as unconstitutional.<sup>1</sup>

Following adoption of the emergency regulations, the Commission took swift action consistent with House Bill 2 and the Commission’s commitment to “promoting diversity and minority participation into the medical cannabis industry.” Specifically, the Commission:

- Awarded \$225,000 in grant funding to educational and business development organizations to provide free training to small, minority and women business owners and entrepreneurs on how to participate and become licensed in the medical cannabis industry. These trainings attracted more than 700 attendees.
- Co-hosted 12 free workshops with the Legislative Black Caucus of Maryland to educate small, minority, and women business owners and entrepreneurs on the medical cannabis industry in Maryland. The trainings were attended by more than 400 potential applicants.
- Co-hosted 4 free workshops with the Legislative Black Caucus of Maryland to discuss the new medical cannabis grower and processor license applications, including how to apply, explanations of the questions, and the laws and regulations in Maryland. The trainings were attended by more than 500 potential applicants.
- Attended conferences and events around the State targeting small, minority-owned and women-owned businesses to promote the medical cannabis industry. This outreach resulted in a database of more than 500 individuals interested in learning more about the medical cannabis industry.
- Accepted public comment and questions on the new grower and processor applications. The Commission received more than 300 questions and posted responses to each question on our website.

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<sup>1</sup> *PharmaCann Ohio, LLC v. Ohio Dept. of Comm.*, Franklin C.P. No. 17 CV 10962 (2018).

### ***Application Period***

The 60-day application period for new grower and processor licenses was scheduled for March 25 to May 24, 2019 at 5:00 PM EST. All applicants were required to submit application materials through an online application portal hosted by a third-party software vendor. As the volume of applicants significantly increased in the hours leading up to the 5:00 PM EST deadline on May 24, applicants began reporting substantial delays in efforts to upload materials to the online application portal. Following the submission deadline, Commission staff also learned that the vast majority of applicants who were able to submit complete applications had failed to meet the minimum requirements for evaluation by including identifying applicant information in their “redacted for evaluation” application materials. Under the *General Instructions*, applicants were given clear instruction on what information was required to be redacted from the “redacted for evaluation” application materials. The *General Instructions* also plainly and prominently stated that if a “redacted for evaluation” copy of an application was found to contain names that were required to be redacted, that would trigger a mandatory disqualification of the application materials under the rules.

On June 6, the Commission met to discuss difficulties in the application process and decided to re-open the application period from June 10 – June 24 and require resubmission of application materials directly to the Commission without the use of the online application portal. The Commission did this to afford applicants an opportunity to submit application materials without risk of technical issues and to offer applicants an opportunity to correct the redaction errors that impacted the vast majority of applications.

On June 10, the Commission issued a press release, posted a notice at [mmcc.maryland.gov](http://mmcc.maryland.gov), and emailed each applicant that had submitted an application in May to inform those pending applicants of the decision to re-open the application process. The Commission also streamlined the application by (1) eliminating certain forms and supporting documentation that were common sources of redaction errors, and (2) providing additional guidance to applicants on how to properly redact the application. Specifically, the Commission posted the following on its website:

The most common errors were including applicant or business name information in the email address used to submit Part D, numerous attachments (particularly in Part B ‘Cont; Part C ‘Cont, CVs/resumes and the organizational chart and preamble), and attachment file names. Applicants are encouraged to thoroughly review their application to ensure that USB #1 does not include the applicant name, business name, name of any owner, investor, employee, or contractor, or name of any corporate parent, subsidiary, and affiliate associated with the application.

The file name for any document on USB drive #1 may not include the applicant’s name, business name, name of any owner, investor, employee, or contractor, or name of any corporate parent,

subsidiary, and affiliate associated with the application. This includes the CV/resume of any owner, investor, employee or contractor.

**Important:** Supporting documentation and other attachments were by far the most common cause of redaction issues. The more supporting documentation provided, the more likely an applicant is to overlook an applicant or business name. Shorter application packages are easier to review for redaction issues.

Prior to May 24 at 5:00 PM EST, the Commission received timely payment from 217 applicants. At least 3 additional applicants partially submitted an application, but did not submit payment. The Commission received 213 applications (109 grower applications, 104 processor applications) by the June 24<sup>th</sup> deadline. Out of the 213 applicants who submitted applications on June 24, 2019, each of them submitted application materials on May 24, 2019. Each applicant who submitted an application by June 24 at 5:00 PM EST had submitted timely payment and/or submitted a partial or complete application by May 24 at 5:00 PM EST.

### ***Application Evaluation***

The Commission conducted an “initial sift” of all grower and processor applications from July 1 to July 15. During this period, Commission staff reviewed each application to determine whether it met the minimum requirements for evaluation, including whether the application included any identifying applicant information. Eleven application were disqualified for failure to meet minimum requirements, specifically failure to meet redaction requirements and failure to submit complete application materials. A total of 202 out of the 213 applications met the minimum requirements and were referred for evaluation.

The Commission collaborated with Morgan State University (“MSU”) to evaluate the applications in a blinded review. MSU was responsible for evaluating questions worth up to 90 out of 100 points on the application, and Commission staff were responsible for evaluating questions worth up to 10 points on the application. Specifically, Commission staff were responsible for evaluating questions relating to disadvantaged equity applicant status and economically disadvantaged areas. Blinded application materials were randomly assigned, and two Commission staff members reviewed each application. MSU identified faculty, staff, and administrators with expertise across all aspects of the review process. Each reviewer was required to read and sign a confidentiality agreement and an agreement confirming his or her experience in reviewing applications according to specified evaluation criteria. Each application was assigned three (3) independent reviewers; none of the reviewers knew who other reviewers were; and all reviewers were instructed orally and in writing not to discuss their applications with anyone.

MSU evaluated, scored, and ranked the grower and processor applications from July 16 to August 31, employing the same rigorous processes and procedures used by the National Institutes of Health (NIH), the National Science Foundation (NSF), the U.S. Centers for Disease Control and

Prevention (CDC), and other federal agencies that evaluate applications for scientific consideration and sponsorship.

MSU submitted a comprehensive evaluation report, and the evaluation scorecard, score, and ranking for each application to the Commission on August 31. Commission staff combined the MSU scores (90 out of 100 points) with the Commission scores (10 out of 100 points), and then shared all blinded application materials with Commission members. Commission members reviewed the blinded grower and processor applications, MSU report, and evaluation materials. Following a two-week review period, the Commission voted to approve the rankings submitted by MSU and Commission staff. This vote **did not** award a Stage One Pre-Approval to any applicant. Rather, the vote enabled the Commission to begin its preliminary investigation of the highest ranking applicants to verify the information and material contained in the applications. Depending on the outcome of the Commission's investigation, the top ranking applications may be eligible for award of Stage One Pre-Approval through a later vote of the Commission.

As of September 24, the Commission had notified all applicants of whether their submission was among the highest-ranking applications. In addition, a copy of the methodology and full rankings for grower and processor licenses was posted on the Commission website on September 26.

### ***Concerns and Next Steps***

The Commission is aware of media reports that raise concerns about the application review process, including the impartiality of the application evaluation. The Legislative Black Caucus of Maryland also sent an official request to the Commission on September 25, asking for a delay in the award of any Stage One Pre-Approval until the Commission completes “the verification process for all applicants to ensure that all companies are truthful in their disclosures about minority ownership, and their financial status.”

From the adoption of the emergency regulations to the implementation of House Bill 2's robust education and outreach initiatives to the application evaluation, the Commission has prioritized fairness, transparency, and public engagement. We are confident that the application evaluation process and procedures developed by MSU and Commission staff was comprehensive and fair. However, the Commission takes seriously the concerns raised about the manner in which the process was executed, and whether the integrity of the process was undermined by any undue influences. In order to evaluate these concerns, the Commission will engage an independent firm to complete an investigation into (1) the accuracy of material aspects of the highest ranking applications, and (2) the impartiality of the application process. Upon completion, the Commission will report on the findings of each investigation with the General Assembly and the public. While there is no definite timeline, the Commission anticipates it will take at least 45-days to complete these investigations.

I hope this information is helpful. If you would like to discuss this further, please contact Will Tilburg, Acting Executive Director, at (410) 487-8069 or [william.tilburg@maryland.gov](mailto:william.tilburg@maryland.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Lopez", with a stylized flourish at the end.

Brian Lopez

Chair, Natalie M. LaPrade Maryland Medical Cannabis Commission

cc: House Health and Government Operations Committee Members  
Senate Judicial Proceedings Committee Members  
Senate Finance Committee Members